State of Utah
DEPARTMENT OF COMMERCE
Committee of Consumer Services

To: Public Service Commission of Utah

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Date: May 10, 2006

Subject: *In the Matter of the Application of PacifiCorp for Approval of Master Electric Service Agreement Between PacifiCorp and IM flash Technologies, LLC* Docket No. 06-035-26; Committee of Consumer Services' Recommendations

1. Background

On February 21, 2006, PacifiCorp filed an application with the Utah Public Service Commission requesting an order approving a Master Electric Service Agreement (Agreement) between PacifiCorp and IM Flash Technologies, LLC (IM Flash). Under the Agreement, PacifiCorp proposes to provide electric service to IM Flash at the former Micron facility located in Lehi, Utah. This facility is located outside of PacifiCorp's certificated service territory. However, PacifiCorp provided service under a franchise agreement with Lehi City and a contract with Micron from 1996 to 2001. Lehi City retains the obligation to serve IM Flash and has provided service since the expiration of the contract. IM Flash now requests that PacifiCorp resume service.

The Agreement provides that through December 31, 2006, IM Flash will pay PacifiCorp $0.07040 per kWh plus applicable franchise fees and taxes for all deliveries during the term of the Agreement. PacifiCorp describes the price as the incremental cost to PacifiCorp to serve the facility's projected load, up to 12 MW, for the term of the Agreement. IM Flash may apply in writing for power and energy above the contract demand if it desires to increase its load.

Beginning January 1, 2007, PacifiCorp will continue serving IM Flash as a Rate Schedule No. 9 retail customer pursuant to a ten (10) year renewal option to be set forth in the Franchise, together with a ten-year Master Electric Service Agreement with IM

Flash. The Committee understands that the contract demand may increase up to 57 MW, perhaps as early as December 2007, but no exact time frame for such increase is stated. The Committee also understands that the cost to serve IM Flash was evaluated by PacifiCorp on the same basis as all other tariff customers taking service under Service Schedule 9.

2. Analysis

To assess the impact upon residential and small commercial customers of PacifiCorp serving IM Flash, the Committee reviewed PacifiCorp's application, the proposed Agreement, and discussed the application with PacifiCorp and IM Flash. In addition, the Committee considered the Agreement and the Application, as they apply to electric service beginning in January 2007, and as addressed in PacifiCorp's general rate case, UPSC Docket No. 06-035-21.

2.1 Initial Contract Period

Through December 31, 2006, the agreement specifies that service provided to IM Flash will be priced at $0.07040/kWh. Based on discussions with PacifiCorp representatives, the Committee understands the above price essentially reflects the Company's current estimate of avoided costs. Stated differently, in the short run IM Flash will be priced on an incremental cost basis. The Committee believes that such pricing will likely generate adequate revenues to cover costs.[1]

2.2 10-Year Contract Period

The Committee's concerns relate to the cost of service and rate impacts from pricing the service provided to IM Flash according to Rate Schedule No. 9, beginning January 2007. Within PacifiCorp's general rate case, the Application will be considered in terms of the distinctive character of IM Flash's expected loads and service terms. Specifically, IM Flash is included as a Rate Schedule No. 9 customer within PacifiCorp's proposed September 2007 test year loads for the general rate case, ranging from 30 MW in October 2006 to 50 MW by April 2007. This ratemaking treatment implies that the prices afforded to IM Flash reflect average embedded costs, which is a sharp change from the incremental cost pricing approach used in the initial contract period.

In response to DPU Data Request 2.3 in this docket, PacifiCorp provided a cost of service study indicating that IM Flash's initial 12 MW load and projected 95% load factor produce a revenue level that may not fully cover costs. (See Attachment 1 to this memorandum.) However, the information, data and assumptions underlying these cost-of-service results have yet to be tested for reasonableness by experts representing diverse interests in the current rate case.[2] Thus, it is premature to conclude whether the proposed prices under the contract provide a revenue level that is fully compensatory and whether

[1] The Committee notes that the price-cost relationship in the initial period has no impact on other ratepayers (customer classes) because of the brevity of the initial contract term. Potential ratepayer impacts only arise when the contract is included as an element in general rates.

[2] For example, the load at the IM Flash facility is anticipated to increase to approximately 50 Mw in the rate effective period. Assuming that the facility maintains a high load factor, the increase in the size of the load may foster greater economic efficiency in the use of PacifiCorp's resources in the shoulder and graveyard periods. This could generally have a positive impact on other ratepayers.

there are significant rate impacts on other customer classes. That more detailed analysis should properly take place within the present rate case.

2.3 Limited Contract Re-opener

In periods between general rate cases, IM Flash's proposal for a limited contract re-opener clause appears to be a satisfactory means to balance the interests of service territory customers and a customer voluntarily served. The Committee understands that load factor reductions greater than 15% could materially affect the cost to serve IM Flash and thereby reduce or end any benefit to PacifiCorp's system that may be realized from the high load factors anticipated by the contract. IM Flash's proposal correctly acknowledges the Commission's right and responsibility to initiate a cost of service study and rate or service condition changes. In the Committee's view, the necessity for, and scope of, risk reallocation for voluntarily serving a customer outside of PacifiCorp's service territory properly remains under the Commission's jurisdiction. The Committee contends that this proposal also allows the Commission to regulate PacifiCorp without altering the IM Flash contract.

3 <u>Recommendation</u>

The Committee recommends that the Commission approve the Master Electric Service Agreement between PacifiCorp and IM Flash subject to the following conditions:

3.1 The Company should perform a detailed cost-of-service analysis of the IM Flash contract in the current rate case. The study should include sensitivity analysis relating to load size (12 MW - 57 MW) and load factor (LF < 95%). It should also identify any rate impacts on other customer classes. Finally, the study should be filed as a supplemental exhibit at least 45 days prior to the date when intervener direct cost-of-service testimony is due in the case.

3.2 The Limited Contract Re-opener Clause pertaining to load factor changes proposed by IM Flash should be adopted. We also concur with the Division's additional "timing" recommendation regarding load factor changes contained in its May 9, 2006 "Response" Memorandum.